2607.

SUPREME COURT OF THE UNITED STATES.

No. 61.

TIMOTHY S. GOODMAN, PL'FF IN ER.,

vs.

JOHN SIMONDS.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MISSOURI.

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MISSOURI DISTRICT, *sct:*

Pleas before the Hon. Robert W. Wells, district judge of the United States for the district of Missouri, and one of the judges for the United [States] circuit court for said district, on the day of October, A. D. 1855.

TIMOTHY S. GOODMAN
against
JOHN SIMONDS.

Be it remembered that heretofore, to wit, on the first day of March, in the year eighteen hundred and fifty-four, came the plaintiff, Timothy S. Goodman, by his attorney, and filed in the office of the clerk of the United States circuit court for Missouri district the following declaration against the defendant, John Simonds, to wit:

Declaration.

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the District of Missouri.

DISTRICT OF MISSOURI, *ss:*

April term, 1854.

Timothy S. Goodman, a citizen of the State of Ohio, complains of John Simonds, a citizen of the State of Missouri, of a plea of trespass on the case upon promises:

For that whereas one Wallace Sigerson, heretofore, to wit, on the twelfth day of September, eighteen hundred and forty-seven, at Cincinnati, O., (meaning Ohio,) which Cincinnati is out of the State of Missouri, and in the State of Ohio, to wit, at the district aforesaid, made his certain bill of exchange, in writing, bearing date the day and year aforesaid, and now here to the court shown, and directed the same to the said defendant, by the name and description of Mr. John Simonds, St. Louis, Mo., (meaning Missouri,) and thereby requested the said defendant, four months after date of that his first bill of exchange, (second unpaid,) to pay to the order of one John Sigerson five thousond dollars, value received, and then and there delivered the same to the said John Sigerson, which said bill of exchange the said defendant, upon sight thereof, accepted in writing. And the said John Sigerson afterwards, to wit, on the day and year aforesaid, at the district aforesaid, en-

dorsed and delivered said bill of exchange to certain persons by by the name and description of T. S. Goodman & Co., or order, and the said T. S. Goodman & Co. then and there endorsed and delivered the same to certain persons by the name and description of W. Nisbet & Co., or order, and the said W. Nisbet and Co. then and there endorsed and delivered the same to said plaintiff; by means whereof the said defendant then and there became liable to pay to said plaintiff the said sum of money in said bill of exchange specified, according to its tenor and effect, and of his acceptance thereof, together with statutory damages thereon, and being so liable, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay him the said sum of money in said bill of exchange specified, according to the tenor and effect of said bill of exchange and of his acceptance thereof, with statutory damages thereon; and for that whereas the said defendant, heretofore, to wit, on the fifteenth day of January, in the year of our Lord one thousand eight hundred and forty-five, at said county, was indebted unto said plaintiff in the sum of ten thousand dollars, for money by the said plaintiff before that time lent and advanced to and paid, laid out, and expended for the said defendant, and at his like special instance and request; and also in the further sum of ten thousand dollars, of like lawful money, for other money by the said defendant before that time had and received to and for the use of the said plaintiff; and also in the sum of ten thousand dollars, of like lawful money, for interest due from said defendant to the plaintiff, for and in respect of the plaintiff having forborne and given day of payment of money due from the defendant to the plaintiff, at the request of the defendant, for a long time then elapsed; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the day aforesaid, at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay him the said several sums of money in this count mentioned, when the said defendant should be thereunto afterwards requested.

And whereas, also, said defendant, afterwards, to wit, on the day and year and at the county last aforesaid, accounted with said plaintiff of and concerning divers other sums of money from the said defendant to the said plaintiff before that time due and owing, and then in arrear and unpaid, and upon such accounting the said defendant was then and there found in arrear and indebted to the said plaintiff in the further sum of ten thousand dollars, of like lawful money; and being so found in arrear and indebted, said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at said county, undertook, and then and there promised said plaintiff, to pay him said last-mentioned sum of money when he, said defendant, should be thereto afterwards requested.

Nevertheless said defendant, although often requested to do so, has not as yet paid said several sums of money in the several counts above mentioned, or either or any part of either of them. but to do so has refused and still refuses, to the damage of said plaintiff of ten thousand dollars; and therefore he brings his suit, &c.

J. R. SHEPLEY & C. S. RANNALS,
Attorneys for Plaintiff.

Upon the filing of the foregoing declaration, the following summons issued, to wit:

Summons.

MISSOURI DISTRICT, *sct:*

The President of the United States, to the marshal of the Missouri district, greeting:

You are hereby commanded to summon John Simonds, a citizen of the State of Missouri, that he be and appear before the honor- circuit court of the United States for the district of Missouri, on the first day of the next term thereof, to be holden at the city of St. Louis, in and for said district, on the first Monday of April next, then and there to answer unto Timothy S. Goodman, citizen of the State of Ohio, in a plea of assumpsit on bill of exchange, to the damage of said plaintiff ten thousand dollars. Hereof fail not, and have you then there this writ.

Witness the honorable Roger B. Taney, Chief Justice of the Su-
[SEAL.] preme Court of the United States, the first day of March, A. D. eighteen hundred and fifty-four.

Issued at office in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

BEN. F. HICKMAN,
Clerk.

Upon which writ the marshal made the following return, to wit:

Marshal's return.

I certify that I executed the within writ, by offering to read the same, together with a copy of the declaration thereto attached, to said defendant, John Simonds, but he declined hearing it read, and acknowledged service thereof, as he knew the nature of said writ.

This done in the city of St. Louis, this first day of March, 1854.

T. S. BRYANT,
U. S. Marshal Mo. Dist.
By R. K. MOORE, *Dep.*

And afterwards, at the April term, 1854, of our United States circuit for Missouri district, on Wednesday, April 5th, 1854, the following proceedings were had in this case, to wit:

Pleas filed.

TIMOTHY S. GOODMAN, plaintiff,
agst.
JOHN SIMONDS, defendant. } Assumpsit.

This day comes the defendant, by his attorney, and files pleas No. 1, 2, 3, 4, and 5, to the declaration of plaintiff in this case.

Said pleas are in words and figures as follow, viz:

IN THE CIR. COURT OF THE UNITED STATES,
Dist. Mo.

TIMOTHY S. GOODMAN
vs.
JOHN SIMONDS, def't.

Plea No. 1.

No. 1. And now, at this day, comes the defendant, John Simonds, by his attorneys, and says, actio non, &c., because he *he* says he did not undertake or promise in manner and form as the plaintiff *is* his declaration hath alleged, and of this he puts himself upon the country.

GLOVER & RICHARDSON,
For the Def't.

Plea No. 2.

No. 2. And for further plea in this behalf, the said defendant says, actio non, &c., because he says that none of the causes of action set forth by plaintiff in his declaration accrued within five years next preceding the commencement of this suit, and this the plaintiff is ready to verify; wherefore the said defendant prays judgment if the said plaintiff his said action, &c., &c.

GLOVER & RICHARDSON,
Attorneys for the Defendant.

Plea No. 3.

No. 3. And for further plea in this behalf, the said defendant says, actio non, &c., because he says that, in the summer of 1847, defendant and John Sigerson, intending to deal largely in pork, placed in the hands of Wallace Sigerson, of Cincinnati, Ohio, as their friend and agent, a skeleton form of a bill of exchange for five thousand dollars, payable four months after date, the same

having on it the name of def't as acceptor, and that of John Sigerson as endorser, but without any date; and the same was delivered to the said Wallace Sigerson as aforesaid, with instructions from this def't, acting for himself and John Sigerson, to said Wallace, to negotiate the same, when advised so to do, for the benefit of def't and said John Sigerson, and to send the proceeds to this defendant, and for no other purpose whatever. That afterwards, said Wallace Sigerson, being indebted to the persons composing the copartnership firm of T. S. Goodman & Co., bankers, of Cincinnati, Ohio, on his own account—neither the said defendant or John Sigerson being in any way chargeable with said indebtedness on the part of said Wallace—and he, the said Wallace having no means of his own wherewith to pay said indebtedness, he, the said Wallace, being continually beset and hard pressed by the said T. S. Goodman & Co., to secure the debt due to them, and being still in possession of the said skeleton bill of exchange, about the 18th day of October, 1847, produced and exhibited to the said T. S. Goodman & Co. the said skeleton bill, without any name thereto as drawer, and without any date; and it was then and there agreed, by and between the said Wallace Sigerson and the said T. S. Goodman & Co., that the said Wallace should sign his name to the said skeleton bill, as the drawer, and should falsely date the said bill, as of the date of September the 12, 1847, and should deliver the same to the said T. S. Goodman & Co., as collateral security for the said debt due by said Wallace Sigerson to the said T. S. Goodman & Co.; all of which was then and there done according to the said agreement. And the defendant says that the said skeleton bill, so filled up, is the said supposed bill of exchange mentioned in the plaintiff's declaration; and the same was passed to the said T. S. Goodman & Co., as collateral security for a debt due them from Wallace Sigerson, and for no other or further consideration, and without any consideration to this defendant or John Sigerson.

The said supposed bill of exchange was afterwards, by the said T. S. Goodman & Co., endorsed and delivered to W. Nesbit & Co., but without any consideration, and merely for collection for the benefit of said T. S. Goodman & Co. That afterwards, the said W. Nesbit & Co. endorsed and delivered the said supposed bill of exchange to the pl'ff, but without any consideration, and merely for the purpose of collection for the benefit of the said T. S. Goodman & Co. All which the said defendant is ready to verify.

Wherefore the said defendant prays judgment if the pl'ff his action ought to have, &c.

GLOVER & RICHARDSON,
For Defendant.

Plea No. 4.

No. 4. And for further in this behalf the defendant says, that

after the said skeleton bill of exchange had been made and delivered to the said Wallace, as stated in last plea above set forth, and for the purposes therein mentioned and no other, the said Wallace, at the instance and request of the T. S. Goodman & Co., filled up the said skeleton bill, as mentioned in the said plea, and delivered the same to the said T. S. Goodman & Co., and they, the said T. S. Goodman & Co., endorsed the same, and delivered it to the said W. Nesbit & Co., and they, the said W. Nesbit & Co., afterwards endorsed and delivered the same to the pl'ff; and the supposed bill of exchange sued on in this case is the said skeleton bill so filled up, and so endorsed and delivered to the several parties as in this and the said last mentioned plea set forth, and no other. And further, this defendant says, that at the times respectively when the said several endorsers of said supposed bill of exchange had the same so endorsed and delivered to them, they and each of them had notice of all the facts stated in the said last-mentioned plea, in relation to the making and delivering the said skeleton bill to the said Wallace Sigerson, and the purposes and objects with which the same was so made and delivered, and that he, said Wallace, had no right to use the same for his own benefit; and this the defendant is ready to verify. Wherefore the defendant prays judgment, &c.

GLOVER & RICHARDSON,
For the Def't.

Plea No. 5.

No. 5.—And for further plea in this behalf, the defendant says, actio non, because he says that the said supposed bill of exchange was obtained from him by Wallace Sigerson, T. S. Goodman & Co., W. Nesbit & Co., and the said plaintiff by fraud, covin, misrepresentation, fraudulent practice, and deceit, the said parties combining and confederating together to cheat and defraud the said defendant in that behalf, and so the def't says he is ready to verify. Wherefore he prays judgment if, &c.

GLOVER & RICHARDSON,
For the Def't.

Afterwards, at the term last aforesaid of our said court, on Tuesday, April 11th, 1855, the following further proceedings were had herein, to wit:

Replication and demurrer filed.

TIMOTHY S. GOODMAN, plaintiff,
agst.
JOHN SIMONDS, defendant.
} Assumpsit.

This day comes the plaintiff, by his attorney, and files his repli-

cation to plea No. 1 of the defendant, Simonds, and also files a demurrer to pleas No 2, 3, 4, and 5 of said defendant.

Said replication to plea No. 1 of defendant is in the following words, to wit:

Replication to plea No. 1.

IN THE CIRCUIT COURT OF THE UNITED STATES
For Missouri District.

DISTRICT OF MISSOURI, *ss:*

TIMOTHY S. GOODMAN
vs.
JOHN SIMONDS.

The said plaintiff, for replication to the plea of said defendant by him first above pleaded, and wherein he puts himself upon the country, &c., doth the like.

J. R. SHEPLEY & C. S. RANNALS,
Att'ys for Pl'ff.

The said demurrers to pleas No. 2, 3, 4, and 5 of said defendant are in words and figures as follow:

Demurrers to pleas Nos. 2, 3, 4, *and* 5.

IN THE CIRCUIT COURT OF THE UNITED STATES
For the District of Missouri.

DISTRICT OF MISSOURI, *ss:*

TIMOTHY S. GOODMAN
agst.
JOHN SIMONDS.

The said plaintiff, as to the plea of said defendant by him secondly above pleaded, says that the same, and the matters and things therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar and preclude him, said plaintiff, from having or maintaining his aforesaid action thereof against the said defendant, and that he, the said plaintiff, is not bound by law to answer the same; and this said plaintiff is ready to verify. Wherefore, by reason of the insufficiency of his plea in that behalf, the said plaintiff prays judgment and his damages, by reason of the not performing of the several promises and undertakings in said declaration mentioned, to be adjudged to him, &c.

J. R. SHEPLEY, *Att'y.*

And the said plaintiff, as to the third plea of said defendant by

him above pleaded, says that the same, and the matters therein contained, in manner and form as above pleaded, are not sufficient in law to bar and preclude the plaintiff from having or maintaining his aforesaid action thereof against said defendant, and that said plaintiff is not bound by law to answer the same; and this said plaintiff is ready to verify. Wherefore, by reason of the insufficiency of said defendant's plea, said asks judgment, &c.

SHEPLEY, *Att'y for Pl'ff.*

The said plaintiff, as to the fourth plea of said defendant above pleaded by him, says that the said plea and the matters therein, in manner and form as therein stated, are not sufficient in law to bar or preclude him from having or maintaining his aforesaid action against said defendant; and this he is ready to verify. Wherefore, by reason of the insufficiency of said plea, plaintiff asks judgment, &c.

SHEPLEY, *Att'y for Pl'ff.*

The said plaintiff, as to the fifth plea of said defendant above pleaded by him, says that the said plea and the matters therein mentioned, in manner and form as above pleaded, are not sufficient in law to bar or preclude him from having and maintaining his aforesaid action against said defendant; and this he is ready to verify. Wherefore, by reason of the insufficiency of said plea, the said plaintiff prays judgment, &c.

SHEPLEY, *Att'y for Pl'ff.*

Afterwards, on Friday, April 28th, 1854, the following entry appears of record in this case, to wit:

Demurrers sustained.

TIMOTHY S. GOODMAN, plaintiff, agst. JOHN SIMONDS, defendant. } Assumpsit.

This day come the parties, by their attorneys, and the matters of law arising upon the demurrers filed by the plaintiff to the 2d, 3d, 4th, and 5th pleas of defendant filed herein being argued, and the court being advised of and concerning the same, is of opinion that the law is for the plaintiff on each of said demurrers; and it is therefore now considered by the court that the demurrers to said pleas Nos. 2, 3, 4, and 5 be and the same are hereby sustained, and on motion of the attorney for the said defendant, leave is given him to file other and additional pleas herein.

Afterwards, on Friday, May 12th, 1854, the following further proceedings were had herein, to wit:

Special plea filed.

TIMOTHY S. GOODMAN, plaintiff,
agst.
JOHN SIMONDS, defendant. } Assumpsit.

This day comes the defendant, by his attorney, and files a special plea in bar to the first count of plaintiff in his declaration filed herein.

Said special plea is in words and figures as follow, to wit:

Special plea.

IN CIRCUIT COURT UNITED STATES,
District Missouri.
April term, 1854.

TIMOTHY S. GOODMAN, plaintiff,
agst.
JOHN SIMONDS, defendant.

The defendant, John Simonds, for further plea in this behalf, and in bar of the first count in plaintiff's declaration, says, actio non, &c., because he says that, in the summer of the year 1847, defendant and John Sigerson, for the purpose of raising money for themselves, placed in the hands of said Wallace Sigerson, of Cincinnati, Ohio, a skeleton form of a bill of exchange for 5,000 dollars, payable four months after date, with the name of this defendant on it as acceptor, and that of John Sigerson as endorser, without date, and without any name as drawer. This skeleton was delivered to the said Wallace by defendant, acting for himself and John Sigerson, with instructions to said Wallace, that when advised to do so, he should negotiate a bill from said skeleton, himself being the drawer, for benefit of John Sigerson and John Simonds, and send the proceeds to this defendant. The said skeleton was delivered to the said Wallace for no other or further purpose whatsoever. Afterwards said Wallace Sigerson, being indebted to the persons composing the firm of T. S. Goodman & Co., of Cincinnati, Ohio, on his own account, neither defendant or John Sigerson having any part in said indebtedness, and being in no way chargable therefor, and he, the said Wallace, having no means of his own wherewith to pay said indebtedness, and having been for some time previously beset and hard pressed by constant importunities from T. S. Goodman & Co., to secure their debt against him, and he, said Wallace Sigerson, being in possession of said skeleton bill, about the 18th of October, 1847, produced and exhibited to the said T. S. Goodman & Co. the said skeleton bill, without any name thereon as drawer, and without any date, and it was then and there agr'd by and between the said Wallace Siger-

son and the said T. S. Goodman & Co. that a bill should be drawn by the said Wallace from the said skeleton, and delivered to the said T. S. Goodman & Co. as collateral security to them for the said antecedent indebtedness; that the said bill should not be drawn as of the true date of issuing the same, but that said Wallace should falsely ante-date the said bill as of the 12th of September, 1847; and it was further agreed that the said T. S. Goodman & Co. should not send the said bill when so delivered to them to St. Louis for collection; and the deft. says the said Wallace did so draw the bill and did so ante-date the same, and did so deliver the same to said T. S. Goodman & Co., and for no other purpose whatever; and the said skeleton bill, so filled up and issued, is the same supposed bill of exchange mentioned in said first count, all which said actings and doings and agreements on the part of said Wallace Sigerson and the said T. S. Goodman & Co. were had and done with intent to cheat and defraud the said John Sigerson and this defendant; that the said endorsement by T. S. Goodman & Co. to W. Nesbit & Co. on said supposed bill, was without any consideration, and merely for collection; that said endorsement by W. Nesbit & Co. to the plaintiff was without any consideration, and merely for collection; all which deft. is ready to verify; wherefore he prays judgment if the plaintiff his action in said first count mentioned ought to have or maintain.

GLOVER & RICHARDSON,
For deft., John Simonds.

Afterwards, on Monday, May 15th, 1854, the following further proceedings were had herein, to wit:

Demurrer to plea filed.

TIMOTHY S. GOODMAN, plaintiff,
against } Assumpsit.
JOHN SIMONDS, defendant.

This day comes again the plaintiff, by his attorney, and files a demurrer to the plea of defendant filed to the first count of said plaintiff's declaration in this case.

Said demurrer to plea of defendant to 1st count is in the following words, to wit:

Demurrer.

IN THE CIRCUIT COURT OF THE UNITED STATES,
For Missouri District.

DISTRICT OF MISSOURI, *ss:*

TIMOTHY S. GOODMAN
vs.
JOHN SIMONDS.

The said plaintiff, as the plea of defendant by him secondly

above pleaded, and in bar of first count of plaintiff's declaration, says that the same, in manner and form as above pleaded and set forth, are not sufficient in law to bar or preclude the said plaintiff from having or maintaining his aforesaid action thereof against said defendant, and that said plaintiff is not bound in law to answer the same, and this said plaintiff is ready to verify. Wherefore, by reason of the insufficiency of said plea, he prays judgment, &c.

J. R. SHEPLEY, *Att'y*.

Afterwards, at the October term, 1854, of our said court, on Saturday, October 7th, the following entry appears of record in this case, to wit:

Demurrer sustained.

TIMOTHY S. GOODMAN, plaintiff, agst. JOHN SIMONDS, defendant. } Assumpsit.

This day come the parties, by their attorneys, and the matters of law arising upon the demurrer filed on the 15th day of May, 1854, by plaintiff to the plea filed by the defendant to the first count in plaintiff's declaration having been submitted to the court, and the court having examined the same and being sufficiently advised thereof, is of opinion that the matters of law arising upon said demurrer is for the plaintiff, and now orders that the said demurrer be and the same is hereby sustained.

Afterwards, at the April term, 1855, of our said court, on Friday, April 6th, the following order was made in this case, to wit:

Depositions opened.

TIMOTHY S. GOODMAN, plaintiff, vs. JOHN SIMONDS, defendant. } Assumpsit.

On motion of attorney for defendant, it is ordered that the clerk of this court open all sealed packages containing depositions in this case.

Afterwards, at the October term, 1855, of our said court, on Monday, October 8th, the following further proceedings were had herein, to wit:

Case set for trial, and jury sworn.

TIMOTHY S. GOODMAN, plaintiff, ag'st JOHN SIMONDS, defendant. } Assumpsit.

This day came the parties, by their attorneys, and both parties

being ready for trial, it is ordered that a jury come; and thereupon comes said jury, viz: R. C. Henry, William H. Lusk, James Obler, John Kelly, O. Colly, Thomas Andrews, David Sheppard, Wesley Bowling, William H. McHenry, John M. Pearson, R. N. Locke, and Jordan Hays, who were sworn well and truly to try the issue joined herein, and the evidence closed; but the arguments of counsel not being concluded at the hour of adjournment, further proceedings are continued until to-morrow morning.

Afterwards, on Tuesday, October 9th, 1855, the following further proceedings were had herein, to wit:

Verdict of Jury.

TIMOTHY S. GOODMAN, plaintiff, ag'st JOHN SIMONDS, defendant. } Assumpsit.

This day come again the parties, by their attorneys, and the jury sworn herein being all present, and the arguments of counsel being concluded, the jury retired to their room to consider of their verdict, and afterwards returned into court the following verdict, viz: We, the jury, find for the defendant. It it therefore now considered by the court that the plaintiff take nothing by his writ in this case, and that the defendant, John Simonds, go hence without day, and recover of the said Timothy S. Goodman the costs in this behalf expended, and that execution issue therefor.

Afterwards, on Tuesday, October 9th, 1855, the following further proceedings were had herein, viz:

Motion to set aside verdict filed.

TIMOTHY S. GOODMAN, plaintiff, agst. JOHN SIMONDS, defendant. } Assumpsit.

This day comes the plaintiff, by his attorney, and files a motion to set aside the verdict and grant a new trial in this case, on the grounds and for the reasons set forth in said motion.

Said motion is in the following words, to wit:

Motion and reasons to set aside verdict.

IN THE CIRCUIT COURT OF THE UNITED STATES
For Missouri District.

TIMOTHY H. GOODMAN against JOHN SIMONDS. }

And now comes the said plaintiff, and moves the court to set aside

the verdict and judgment in the above cause, and grant a new trial in said cause, for the following reasons, to wit:

First. Because the verdict is against law.

Second. Because the verdict is against evidence.

Third. Because the verdict is against the weight of evidence.

Fourth. Because the court gave improper and illegal instructions asked by defendant.

Fifth. Because the court refused to give proper and legal instructions asked by plaintiff.

SHEPLEY, KASSON, & RANNALS,
Att'ys for Pl'ff.

Afterwards, on Friday, October 26th, 1855, the following further proceedings were had herein, to wit:

Motion argued.

TIMOTHY S. GOODMAN, plaintiff,
agst.
JOHN SIMONDS, defendant. } Assumpsit.

This day come the parties, by their attorneys, and the motion made herein to set aside the verdict and grant a new trial in this case was argued and submitted to the court, but the court not being sufficiently advised of and concerning the same, took time to consider thereof.

Afterwards, on Tuesday, October 30th, 1855, the following order was made herein to wit:

Motion to set aside verdict overruled.

TIMOTHY S. GOODMAN, plaintiff,
agst.
JOHN SIMONDS, defendant. } Assumpsit.

This day come again the parties, by their attorneys, and the court being sufficiently advised of and concerning the motion made herein to set aside the verdict and grant a new trial in this case, now orders that the said motion be and the same is hereby overruled.

Afterwards, on Wednesday, October 31st, 1855, the following further proceedings were had herein, to wit:

Bill of exceptions filed.

TIMOTHY S. GOODMAN, plaintiff,
agst.
JOHN SIMONDS, defendant. } Assumpsit.

This day comes the plaintiff, by his attorney, and files his bill of

exceptions herein, which being signed and sealed, it is ordered to be made part of the record in this case.

Which said bill of exceptions is as follows, to wit:

IN THE CIRCUIT COURT OF THE UNITED STATES
For Missouri District.

TIMOTHY H. GOODMAN
vs.
JOHN SIMONDS.

Testimony of Robert M. Nesbit.

Be it remembered, that on the trial of the above cause, the plaintiff introduced a witness, Robert M. Nesbit, who testified that he was a notary public of the county of St. Louis, and as such presented the bill of exchange sued on to the acceptor, John Simonds, on the 15 January, 1848, and demanded payment of the amount of the bill, which was refused by Mr. Simonds, and I gave notice of the presentment and refusal to both endorsers. I am well acquainted with all the signatures upon the bill except that of the drawer. They are all the genuine signatures of those they purport to be. The endorsement of W. Nesbit & Co. to Timothy S. Goodman was for the greater convenience of bringing suit. W. Nesbit & Co. *has* the bill for collection at the time demand was made, and had no interest in the bill. Timothy S. Goodman, the plaintiff, was a member of the firm of T. S. Goodman & Co.

Plaintiff then read in evidence the bill of exchange sued on, with the endorsement thereon, which are as follows:

Bill of exchange.

Exch'ge for $5,000. CINCINNATI, O., *Sept. 12th*, 1847.

Four months after date of this, my first of exchange, (second unpaid,) pay to the order of John Sigerson five thousand dollars, value received, and charge the same to account

Your ob't serv't,
WALLACE SIGERSON.

Mr. JOHN SIMONDS,
St. Louis, Mo.

Upon the face of the foregoing bill was written: "Accepted, John Simonds." And endorsed upon the same was the following: "Pay to T. S. Goodman & Co., or order, John Sigerson." "Pay W. Nesbit & Co., or order, T. S. Goodman & Co." "Pay Timothy S. Goodman, without recourse to W. Nisbit & Co."

The plaintiff here rested.

Testimony of Wallace Sigerson.

The defendant examined as a witness Wallace Sigerson, who testified as follows: I reside in Cincinnati, Ohio, and have resided there since 1845. I know John Sigerson and John Simonds. I am the brother of John Sigerson. I have known the house of T. S. Goodman & Co. nearly ever since I resided in Cincinnati. (Bill of exchange sued on shown to witness.) I know this paper. I transferred it to plaintiff's house, or to the firm of which plaintiff is a member. It came to me enclosed in a letter from Mr. John Simonds. It was partly filled up; that is, it lacked the date and the signature of the drawer—nothing else blank about it. John Sigerson's endorsement was on it in blank when I got it, and in blank when I delivered it to Goodman. (Here the witness was shown the letter of John Simonds to him, enclosing two bills, which letter was admitted to be in the hand-writing of John Simonds, and was here read to the jury.) Said letter is as follows:

Letter of Simonds to Sigerson.

ST. LOUIS, *June 21st*, 1847.

WALLACE SIGERSON, Esq., *Cincinnati.*

DEAR SIR: Your brother John and myself have determined to do a little in pork again another season. The general outlines of the operation, I believe, he has communicated to you; to carry out which, we are induced, from your former kindness, to ask your assistance in raising some funds. Our bank has not the means of affording facilities. Her issues are said to be fully up to her chartered limits, and yet such is the scarcity of her paper in this city, she has paid out specie quite freely in the last ten days on checks of depositors.

If prospects should justify, we may require some 20 to $25,000 during the next 4 to 5 months to carry out our present views, say in sums of about $5,000, as same can be used from time to time; and as by far the largest portion will be used in the northern part of Illinois and in Iowa, it would seem to afford an inducement to some of your banks wishing to extend their circulation to make the loan desired. Enclosed I hand you my letter of credit for $10,000, and also two bills for $5,000 each, on receipt whereof, please to do us the favor to negotiate $5,000, and send me the proceeds. If about one-fourth can readily be obtained in Missouri bank paper, it might be an accommodation, as the farmers sometimes desire means the most ready converted into land office money. But do not let that be an obstacle in the way of effecting the loan. If you draw under the letter of credit, of course you need not use the acceptances, and so vice versa; but I send both, that you may use either, as circumstances may seem to require. When a further sum is desi-

rable, you shall be duly advised, it being our purpose only to obtain loans as we can use the same to advantage.

Last winter I mentioned the subject to some of your banks trying to get a circulation in this city and surrounding country. Experience has demonstrated that our bank cannot supply the legitimate wants of our growing community. We must have a greater paper circulation, and the first bank in good credit stepping in can supply the deficit with but little risk of having her notes sent home in a hurry: for, if confidence existed, the paper would be kept among us for our own convenience. I could put out, in a quiet way, 20 to $30,000 a month, in good four months' eastern bills, and forward same, so that the bank in no event could have a thousand dollars returned upon her before the exchange would be in hand.

I shall write you again soon, and am your ob't serv't,

JOHN SIMONDS.

In this letter two bills are mentioned, one of which is that now in suit, and the other was negotiated previous to this. I received letters from St. Louis in from four to six days' time. I can't say exactly when I received this. The proceeds of the other bill, or a part of it, was sent to John Simonds. Can't state the time this bill was negotiated exactly. I first offered it to Goodman for discount regularly, and he declined; this was soon after I received it. I offered it once, and I think twice, to him for discount. The date was then blank. It was not then filled up with my name as drawer. I think it was about the 18th of October I put my name as drawer, and filled the blank date with September 12th. Goodman was anxious it should not have so long time to run. I had a settlement with Goodman & Co., and owed them about $5,600, which I divided (the debt) into two notes, one having sixty, the other seventy-five days to run. They were to mature twelve or fifteen days before the bill. Notes were made to become due at time they were, with the express agreement that this bill should not go out of Goodman's hands until I failed, and only in the event I should fail to pay the last note when it became due. I was advised, some time after this settlement, that the bill had gone to St. Louis. I met Goodman, and demanded of him why he sent it to St. Louis against my will. He looked down a moment, and then answered, I wanted to see if it was worth anything, or if I could get anything for it. I told him at the time of negotiation that I did not wish the bill to go to St. Louis under any circumstances, as I had other assets maturing which I expected to realize before the maturity of my notes, and wished to appropriate them that way. He agreed it should not go to St. Louis. I mean Timothy S. Goodman. All my transactions were with him. I cannot recollect all the particulars. I think it was left for discount, in the first place, with Goodman. I had so many transactions that I can't recollect the time. He wished me to date it, I believe. I gave him authority to date it, but it is

filled up in my handwriting. He had my authority before to fill it up. Can't recollect the time I wrote the word accepted on the face of the bill; I think at the time I filled it up. I had been dealing with Goodman & Co. several months during the spring and summer of 1847. Part of the indebtedness for which my notes were given had been due some time; I think two months. The house had been quite pressing towards the last to get all the securities I could place in their hands. Goodman & Co. had collaterals before they had this, but realized nothing from them. No money was advanced me, I am sure, at the time the settlement was made. Don't recollect of any. I gave my notes in payment of the indebtedness, and gave the bill as collateral security, I think my indebtedness was not increased after I gave the other collaterals. I gave my two notes in payment of the debt, and left this bill as collateral to the notes, fixing dates as I have stated. The reason for ante-dating the bill, was that Goodman did not wish to lie out of his money four months from the time of settlement. He could not use the bill if it had been four months from that time, unless in the market, which he finally did. T. S. Goodman & Co. were exchange brokers or private bankers, considered then quite large.

On cross-examination, the witness said: I sent a part of the proceeds of the first bill to John Simonds. Don't know if I sent all. I know I did not send all. I did other business with Goodman & Co. the same season. I had procured, to be discounted, other bills of the same kind for John Sigerson and John Simonds, to the amount of twenty-five thousand dollars. Do not recollect how much of the last bill I got discounted for them was remitted to them.

I gave Goodman & Co. orders on houses in New Orleans where I had margins during that summer and fall. I gave them an order on Hewitt, Heran, & Co., and think on some other house. It was during that summer. Can't state the amount. I gave them, some time in the fall, exchange on Ravisess, Bulock, & Co. as collateral. I am quite certain it was collateral. I think one of them was discounted. I don't recollect whether both those drafts on Ravisess, Bulock, & Co. were discounted, or only one of them. I told Mr. Goodman that I had a right to use this bill. I never offered any paper to anybody in which I did not give them to understand I had authority to use it. I did so in this case. The bills on Ravisess, Bulock, & Co. have turned out not worth a cent. I can't state whether both of the drafts on Ravisess, Bulock, & Co. were discounted or not. Don't recollect the time I gave Goodman & Co. the authority to fill up the bill. I think, but am not positive, that the authority was not given at the time I first left the bill with Goodman. It is not a late recollection that it was offered to Goodman for discount. I first offered it, I think, for discount to the Ohio Life Insurance Company. Have often offered a bill for discount to which I was a party without my name being filled in, and then filled it when I got it discounted. After offering it to Goodman & Co. for dis-

count, I withdrew it. It was afterwards I left it with them as collateral; it was before it was filled up that I left it with them as collateral. I don't recollect if I had any money from them on the 12th of September or not; don't think I had any money from them so late as that; can't recollect when the bills of Ravesess, Bullock, & Co. came back; presume they must have come back about the time the notes were given, as they formed a part of the indebtedness for which the notes were given; there was no agreement or conversation with Goodman at the time the bill was first left with T. S. Goodman & Co. as collateral, as that the bill was not to be sent on to St. Louis for collection, or anything in relation to that *to that* matter. I told them at that time nothing that I can recollect about not sending it to St. Louis for collection. I probably learned it had been sent to St. Louis from letters from John Sigerson or John Simonds. I think it was perfectly well known in Cincinnati, in November, 1848, that I was a failed man; it was known to some before that. I had discounts in the Ohio Life Insurance Company up to the 22d of August, and deposits up to the 6th of November. It was southern drafts drawn against actual transactions that came back before. Witness is here shown his two notes given by him to T. S. Goodman & Co., which notes are as follow, to wit:

Notes of Sigerson to T. S. Goodman & Co.

"$2,830 $\frac{45}{100}$. CINCINNATI, *Oct. 12th*, 1847.

"Seventy-five days from date I promise to pay to the order of T. S. Goodman & Co. twenty-eight hundred and thirty $\frac{45}{100}$ dollars, value received, at the office of T. S. Goodman & Co.

"WALLACE SIGERSON."

"2,836 64. CINCINNATI, *October 12th*, 1847.

"Sixty days from date I promise to pay to the order of T. S. Goodman & Co. twenty-eight hundred thirty-six $\frac{64}{100}$ dollars, value received, at the office of T. S. Goodman & Co.

"WALLACE SIGERSON."

They are the notes I gave to T. S. Goodman & Co. They have never been paid. I had transactions with the Ohio Life Insurance Company as late as the 6th of November. The notes given by me to T. S. Goodman & Co. are still unpaid. The margins that I relied upon were not realized. I knew by November that I could not meet my notes given to Goodman & Co.

Upon being shown his deposition taken by plaintiff in the case, witness continued: I stated when this deposition was taken that *that* it was about the last of August when I delivered this bill to Goodman.

I stated in my former depositions that the bill was ante-dated. It

is my impression now that the date was filled up at the time I last delivered it to Goodman. My transactions that season were large, amounting to about $400,000. I had many transactions with John Sigerson, of St. Louis. Sigerson drew on me, and I on him. Some of these were regularly discounted in bank. I was dealing in pork and produce generally.

I believe this bill was first offered to the Ohio Life and Trust Company for discount. It was, I find, in my possession on the 10th day of August, as stated in my deposition, and came into my hands between that date, and the 12th day of July previously. I see by my bank book that the other bill I had discounted was discounted on the 10th of August.

I stated in my deposition taken in this case that I left it with Goodman & Co. for temporary loans in the first place. That is so. I can't say if any temporary loans were had after that.

I stated in my deposition that I left the bill as collateral security for temporary loans in the first place. This is true.

I did not state as is stated in that deposition, that it was filled up at the day of its date either by Mr. Goodman or myself, and was signed, of course, by me. That is a mistake of the magistrate. I meant to say that it was filled up at the time it was dated, but it was ante-dated.

The witness first stated that the bill sued on was left with T. S. Goodman & Co. as collateral security for loans. He was asked whether there *was* any loans made or money advanced to him by T. S. Goodman, at the time the bill was left with T. S. Goodman & Co. He answered he could not recollect.

Afterwards, and after he read parts of his former examination, and studied some time, he stated that no money was paid or advanced at the time he left the bill, but it was left with T. S. Goodman & Co. for temporary loans before that made.

On re-examination, witness stated: I cannot tell what interest was charged me, nor what amount of the notes is interest. It *it* was a large item; some of it had lain over a long time. I was usually charged by the month for temporary loans. I never got any money from them at legal interest.

Deposition of Luther C. Clarke and exhibits thereto.

The defendant then read deposition of Luther C. Clarke, as follows, together with exhibits thereto:

The deposition of Luther C. Clarke, taken on the 8th day of November, 1852, who deposeth, that during the year 1847 he was a member of the firm of E. W. Clark & Brothers, then and still doing business in the city of St. Louis, Missouri, as brokers and bankers. On or about the 25th of November, 1847, our said firm received a letter from the firm of T. S. Goodman & Co., who were then doing business as brokers in Cincinnati, Ohio, enclosing the

bill of exchange for $5,000, accepted by John Simonds, due the 12th and 15th of January, 1848, which I believe to be the same bill on which these suits are brought. The said letter is hereto annexed, marked A. Upon receiving said bill and letter, I offered said bill to said Simonds for sale in said St. Louis. Upon showing said bill to said Simonds, he said, "it was a forgery of his name." My best recollection and belief is, that said Simonds stated that Wallace Sigerson had no authority to use the said bill. I am positive he told me not to sell said bill. Said Simonds, on the same day, I think, called at my house and left a paper, which he requested me to forward to T. S Goodman & Co., at Cincinnati, the same firm from whom I received said bill. After I received this paper or letter, I forwarded the same, together with said bill, to T. S. Goodman & Co., at Cincinnati, accompanying them with a letter from our firm; and I believe exhibit B, hereto annexed, is a copy of my said letter. When I received said bill I don't now recollect what endorsements were on the same, or whether there were any. The paper which is referred to in exhibit B as "the enclosed note" was the same paper which Simonds handed me as above stated. I do not now recollect the contents of said note or letter, nor any portion of its contents, nor whether I read it. I have no recollection of there being anything upon said bill to show who was the owner of it when we received it.

LUTHER C. CLARK.

The taking of the said deposition not being completed on the said 8th day of November, the same was adjourned till the day following, when the deponent, on cross-examination, continued as follows:

I cannot recollect positively that Simonds said "that Wallace Sigerson had no authority to use said bill." I have no recollection whether or not the note or letter above spoken of was signed, but my impression is that it was signed, and that I read it. I have been an exchange broker ten or eleven years last past. Goodman & Co. were brokers, and are so still, I believe. I was corresponding with them occasionally, in a business way, in November, 1847. I should not understand from the clause at the foot of exhibit A, in these words, "but we do not endorse it, as we are selling it for another," that T. S. Goodman & Co. had no interest in said bill.

Witness continued:

I know nothing of any correspondence between Mr. Simonds and T. S. Goodman & Co., and have no recollection as to whose handwriting said bill of exchange was in.

LUTHER C. CLARK.

Exhibit A, referred to in the annexed depositions taken before me.

JOHN BISSELL,
Commissioner for Missouri.

CIN., *Nov.* 20, 1847.

Messrs. E. W. CLARK & BROTH.

GENT.: Please find herein John Simonds' accept., due 12 | 15 Ja'y, 5,000, which you will please pass at least rate, not exceeding at the rate of 12 p'r c't. int., and return us the proceeds in sight ch. N. Y. We are informed their names are first rate, but we do not endorse it, as we are selling it for another.

Yours, truly,
T. S. GOODMAN & CO.

Ex. N. Y. par.

Exhibit B, referred to in the annexed depositions taken before me.

JOHN BISSELL,
Com'r for Missouri.

SAINT LOUIS, *November* 26, 1847.

Mess. T. S. GOODMAN & Co.

GENTL.: Your favor of the 20th inst. came to hand yesterday. Thinking that Mr. Simonds might discount the bill at a better rate than any one else, we offered it to him. He at once said it was not right; that Wallace Sigerson had no authority to use the bill, and that it must be a forgery of his name. In the evening he sent the writer at his house the enclosed note. Under these circumstances we do not deem it prudent to pass the bill, although we probably could do so within your limits. We return it herein.

Yours, truly,
(Signed,) E. W. CLARK & BROTHERS.

Exchange ¼ prm.

Mr. Simonds admitted the acceptance to be his; of course any innocent holder of the bill is safe.

Also letter of Simonds to Goodman & Co., as follows:

Letter of Simonds to T. S. Goodman & Co.

ST. LOUIS, *Nov'r 25th*, 1847.

Messrs. T. S. GOODMAN & Co., *Cincinnati.*

GENTLEMEN: Messrs. E. W. Clark & Bros., of this city, have to-day shown me a bill for $5,000, at 4 mo. from the 12th Sept. last, which purports to have been drawn by Mr. Wallace Sigerson, of your city, on myself, and endorsed by John Sigerson. As no authority existed to make any such bill, and no consideration having been received therefor, I presume the same is a forgery, and have notified Messrs. Clark & Bros. in writing not to negotiate or sell the bill, as payment thereof will be resisted to the full extent of the law.

I have also written to Mr. Wallace Sigerson to try and find out the rogue.

Your ob't serv't,

JOHN SIMONDS.

Please acknowledge the receipt hereof.

Also letter of T. S. Goodman & Co. in reply, as follows:

Reply of T. S. Goodman & Co. to John Simonds.

CIN., *Nov.* 30, 1847.

JOHN SIMONDS, Esq.,

SIR: We are in receipt of your communication of the 25th inst., and we are suprised at its contents. The acceptance of yours we took of Mr. Wallace Sigerson in good faith, and we know all the names on the bill are genuine, and not forged, as you suggest; and we know also that we can collect the bill against all your endeavors to the contrary.

We will say farther, if the bill is not paid at maturity, and is to be resisted on the ground you state, Mr. Wallace Sigerson will be a fair candidate for the penitentiary.

We think, upon reflection, you will come to different conclusion in reference to resisting the payment of said bill.

Yours, truly,

T. S. GOODMAN & CO.

Defendants also read deposition of Donald McDonald, taken in another case between same parties, as follows:

Deposition of Donald McDonald.

The deposition of Donald McDonald, taken on the 12th day of April, 1849, who deposeth as follows:

1st question by pl'ff's att'ys. Are you acquainted with the parties to this suit?

1st answer. I am acquainted with Timothy S. Goodman, but not with Mr. Simonds.

2d question by same. Have you any knowledge of the business house of T. S. Goodman & Co.? If you have, please state what means of information you have or had of that house.

2d answer. I was in the employment of that house, as a book-keeper, from the month of June, 1847, to 1st January, 1848.

3d question by same. Do you know of any business transaction of Wallace Sigerson with that house? If any, please state what that transaction was, all you know concerning it, and your means of information.

3d answer. As soon as I entered the employ of that house, I had many opportunities of seeing Mr. Sigerson, who had got notes discounted by the house, and which notes at maturity were not paid.

The notes to which I refer, as not having been paid, Messrs. Goodman were very anxious to have Mr. Sigerson pay. They used all their urgency to that effect. In the month of October, 1847, with a view to a settlement, Mr. Wallace Sigerson gave his own notes, dated 12th Oct., 1847, one at sixty days from that date for $2,836\frac{64}{100}$ dollars, and another note of the same date at 75 days' date for $2,830\frac{45}{100}$; and he gave at the same time, as collateral security, his bill on John Simonds, St. Louis, dated 12th Sept., 1847, at four months from date, for $5,000, endorsed by John Sigerson and accepted by John Simonds. Mr. Goodman was so anxious about the commercial character of Mr. John Simonds, or rather about his responsibility, that he went over to the Trust Company and made inquiry *at* them about Mr. Simonds, and received very satisfactory information regarding him. From the form of the office of the Messrs. Goodman, and from the position of the desk at which I wrote, which was immediately where Mr. T. L. Goodman generally sat and transacted his business with his customers, that I could not avoid hearing all that passed between him and his customers. This enables me to state so particularly about Mr. Sigerson. In one of the books kept by Messrs. Goodman—the discount book—which is ruled with a number of columns, the entry connected with Mr. Wallace Sigerson's bills of that date, in the column where collateral securities are given, the names of Mr. John Sigerson and Mr. Simonds are entered as collateral securities.

4th. question. If you heard any conversation as to this bill between Mr. Goodman and Mr. Wallace Sigerson, please to state what that conversation was, as nearly as you can recollect it.

4th answer. I can't recollect of any conversation that I heard between them on the subject. My decided impression, from the conversation at the period, is that the bill was taken in the usual way as collateral security; and from the extreme anxiety the Messrs. Goodman exhibited to have this claim against Mr. Sigerson on these notes secured, they at the time considered that they had got them so done from the responsibility of the collaterals.

5th question by same. Do you know whether that paper of Wallace Sigerson to Goodman & Co., spoken of above, has been paid?

5th ans. It has not been paid. I know it has not been paid. I know it from the fact that I saw the notes some two months ago, or the last time my deposition in the case. I saw them in the possession of the Messrs. Goodman.

Cross-examined by C. D. Drake, att'y for defendant.

1st. question. Was the bill, which you state was left by Mr. Sigerson with T. S. Goodman & Co. as collateral security, left at the time the two notes you mention were executed?

6th ans. I believe so. I may add that the bills did not go through my hands at the time.

2d question by the same. Was said bill entered on the books of T. S. Goodman & Co. at the time it was taken, and in what way?

7th answer. I believe it was entered, and in the way I have already stated; that is, it was entered in their discount book, which is ruled in a number of columns, one of which is for collaterals.

3d question by same. Were the two notes, which you mention as having been given by Wallace Sigerson, given for money advanced by T. S. Goodman & Co to him at the time they were executed, or before?

8th ans. They were given for money advanced before.

4th question by same. Was any money advanced by T. S. Goodman & Co. to Wallace Sigerson at the time these notes were executed, and as a part of the consideration thereof?

9th ans. None that I am aware of.

5th question by same. If any money had been so advanced at said time, would it have come under your observation as book-keeper?

10th ans. Yes.

6th question by same. Was there any other consideration passing from T. S. Goodman & Co. to Wallace Sigerson for said bill than that of its being collateral security for said notes?

11th ans. None that I am aware of.

7th question by same. If there had been any other consideration than that, would it have to your knowledge as book-keeper?

12th ans. I cannot tell.

8th question by same. If there had been any other consideration than that, in the shape of money, or bills, or notes, would it have come to your knowledge as book-keeper?

13th ans. I did not keep all the books. I kept the daily cash book, the ledger, and another book, which was a transcript of the cash book. If Mr. Goodman had paid out money to Mr. Sigerson, it would undoubtedly have appeared in the daily cash book.

9th question by same. Do you know of any other collateral security held by T. S. Goodman & Co. for the two notes of Wallace Sigerson you have mentioned?

14th ans. I do not.

10th. Question by same. Was the indebtedness for which said notes were given to T. S. Goodman & Co., or to T. S. Goodman?

15th ans. It was to T. S. Goodman & Co.

11th question by same. When the bill you have mentioned was left with T. S. Goodman & Co., were you present or within hearing of the parties? If so, state what passed.

16th ans. I was cognizant of the fact, but I cannot state exactly whether I was present at the time the transaction was closed. I have so often seen Mr. Sigerson there, and knew generally about what was going on, that I can't charge my memory exactly with what took place at the close.

12th question by same. Did you, at or about the time said bill was left by T. S. Goodman, hear Wallace Sigerson say to Mr.

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Goodman or any member of the firm that he did not wish the bill sent to St. Louis for collection?

17th ans. I did not.

DONALD MACDONALD.

Defendants also read deposition of Charles Stetson, as follows:

Deposition of Charles Stetson.

The deposition of Charles Stetson, taken on the 19th day of April, 1849, who deposeth:

Please state if you had any conversation with T. S. Goodman, of the firm of T. S. Goodman & Co., in the summer or fall of 1847, concerning the pecuniary ability of John Simonds, of St. Louis. If you had, please state all you remember of it, with as much particularity as you can. (This question objected to by C. D. Drake, esq., of counsel for def't, on the ground that Mr. Goodman's conversations are not evidence in his favor.

1st answer. I had conversation with Mr. Goodman about the time and on the subject indicated in the question. The inquiry which Mr. Goodman made of me, was in regard to the character and responsibility of John Simonds, of St. Louis. My reply was, that this company (the Ohio Life Insurance and Trust Company) had held his obligations, and that they had always been promptly met on maturity. These obligations had been acceptances of bills made by Wallace Sigerson, and also by John Sigerson. The bills themselves had been accepted either on their face, or drawn by Wallace Sigerson, under letters of credit issued by Mr. Simonds. I rather think I told Mr. Goodman that I did not consider him (Simonds) a man of large means, but that I thought him a man of standing and integrity. By request, I further state that I am President of the Ohio Life Insurance and Trust Company.

CHARLES STETSON.

Testimony of Edward Chase.

The plaintiff, in rebuttal, called Edward Chase, who testified that he had been in the exchange and banking business since 1847, and since that time had known John Simonds. John Simonds' paper was more likely to have sold in the market over rather than under twelve per cent. per annum. This is as low as I have known any ordinary transaction for eight years.

Plaintiff's instruction to jury.

The court, at the instance of plaintiff, gave the following instruction to the jury:

If T. S. Goodman & Co., the plaintiff in the cause being a member of said firm, acquired the bill in question from Wallace Sigerson

as collateral security for his indebtedness to them of equal or larger amount, without knowledge or notice to them or any member of said firm of a want of authority or right of said Wallace Sigerson so to appropriate or dispose of the same, the plaintiff is unaffected by such abuse of trust or improper conduct of said Wallace, and the defendant is is precluded from setting it up as a defence in this suit.

Defendant's instruction.

The court, at the instance of the defendant, gave the following instruction:

1. If the jury find from the evidence that the bill sued on, with the acceptance of the defendant and the endorsement of John Sigerson in blank thereon, was delivered by the defendant to Wallace Sigerson, with authority to the said Wallace to negotiate the same for the use and benefit of the defendant and John Sigerson, or either of them, or to hold the same subject to further instructions or orders of the defendant; that he, said Wallace Sigerson, had no funds in the hands of the defendant, and paid no consideration for said bill or acceptance, had no interest in the same or in the proceeds thereof, and no authority to dispose of either otherwise than as aforesaid; that the said Wallace Sigerson, so holding the said bill, delivered the same to T. S. Goodman & Co. as collateral security for a debt or sum of money then and before due and owing by him to them; that the said firm received the said bill as such security, and upon no other contract or consideration; that no money or valuable thing was advanced, and no new and additional credit given by them to the said Wallace Sigerson on the faith of the said bill and acceptance; and if the jury further find that at the time the said bill was so received by the said firm the plaintiff was a member thereof, and that he or any of the co-partners then or before had notice that said Wallace Sigerson had no interest in the said bill or its proceeds, and no authority to dispose of either to his own use or to pay or secure his own debts or liabilities, they ought to find for the defendant.

Further instruction, as asked by defendant.

The defendant asked the court to give the following instruction to the jury:

"The deft. moves the court to instruct: If the jury find from the evidence in the cause that Wallace Sigerson never had any interest in the bill sued on nor in the proceeds thereof, nor any authority to use the same for his own benefit, and did dispose of the same for his own benefit to *to* T. S. Goodman & Co, and the plaintiff was at the time one of said firm, and when the bill was so transferred to said firm such facts and circumstances were known to the said Goodman as caused him to suspect or that would have

caused one of ordinary prudence to suspect, that said Wallace had no interest in the bill, and no authority to use the same for his own benefit."

To the giving of which by the court the plaintiff objected, and the court gave to the jury that instruction amended so as to read as follows:

Same instruction, as amended by the court.

"And by ordinary diligence he could have ascertained that said Wallace Sigerson had no interest in said bill and no authority to use the same for his own benefit, then they will find for the defendant."

To the giving of which, as thus amended, the plaintiff objected, and excepted then and there to the giving of the same to the jury.

The defendants asked the court to give the following instructions to the jury:

Instructions asked by the deft., but refused by the court.

(2.) If the jury find from the evidence that the bill sued on, with the acceptance of the defendant and the endorsement of John Sigerson thereon in blank, was delivered by the defendant to Wallace Sigerson, with authority to the said Wallace to negotiate the same for the use and benefit of the defendant and John Sigerson, or either of them, or to hold the same subject to further instructions or orders of the defendant; that he, said Wallace Sigerson, had no funds in the hands of the defendant, and paid no consideration for said bill or acceptance, had no interest in the same or in the proceeds *of* thereof, and no authority to dispose of either otherwise than as aforesaid; that the said Wallace Sigerson, so holding the said bill, delivered the same to T. S. Goodman & Co. as collateral security for a debt or sum of money then and before due and owing by him to them; that the said firm received the said bill as such security, and upon no other consideration; that no money or valuable thing was advanced and no new indebtedness created on the faith of the said bill and acceptance; and if the jury further find that at the time the said bill was so received by the said firm the plaintiff was a member thereof, they ought to find for the defendant.

(3.) If the jury find from the evidence that the bill sued on, with the acceptance of the defendant and the endorsement of John Sigerson in blank thereon, but having blanks for the signature of the drawer and the date, was sent by the defendant to Wallace Sigerson, with authority to fill the blanks and negotiate the bill for the use and benefit of the defendant and John Sigerson, or either of them, or to hold the said bill subject to the further instructions of the defendant; that he, the said Wallace Sigerson, paid no consideration for said bill, and had no interest in the same or in the proceeds thereof, and no authority to dispose of either otherwise than

as aforesaid; that the said Wallace Sigerson, so holding the said bill, filled the blanks therein and delivered the same to T. S. Goodman & Co. as collateral security for a debt or sum of money then and before due and owing by him to said firm; that said T. S. Goodman & Co. received the said bill as such security, and upon no other contract or consideration; that no money was advanced by them and no new indebtedness created on the faith of the said bill or the acceptance of the defendant; that the time the said bill was so received by the said T. S. Goodman & Co. the plaintiff was a member of said firm, the jury ought to find for the defendant.

(4.) If the jury find from the evidence that the bill sued on, with the acceptance of the defendant and the endorsement of John Sigerson in blank thereon, but having blanks for the signature of the drawer and the date, was transmitted by the defendant to Wallace Sigerson, for the purpose of his becoming a party as drawer, with authority to fill up the date and negotiate the said bill for the benefit of the defendant and John Sigerson, or either of them, or to hold the same subject to the further instructions or orders of the defendant; that the said Wallace Sigerson had no funds in the hands of the defendant, and paid no consideration for the bill or the acceptance thereof; that he had no interest in the same or the proceeds thereof, nor any authority to dispose of either otherwise than as aforesaid; and if the jury further find that the said Wallace delivered said bill, with the blanks filled, to T. S. Goodman & Co., (a firm of which the plaintiff then was a member,) as collateral security for a debt or sum of money before then due and owing by him to said firm; that the said bill was ante-dated, as stated in evidence, at the request of said firm or any member thereof, and received as security as aforesaid, and upon no other contract or consideration; that they advanced no money or valuable thing, and gave no new or additional credit to the said Wallace Sigerson on the faith of the said bill or the acceptance thereof, they, the jury, ought to find for the defendant.

But the court refused to give the same, to which the defendant excepted.

The jury found a verdict for the defendant, and thereupon the plaintiff in due time filed his motion and reasons to set aside the verdict and judgment, and granting a new trial in said cause, as follows: (Said motion and reasons are inserted on page 17, immediately following the order filing the same.—Clerk.) Which motion the court overruled, and to the overruling of which motion the plaintiff then and there excepted, and prays that this his bill of exceptions may be allowed, which is accordingly done.

R. W. WELLS. [SEAL.]

MISSOURI DISTRICT, *set:*

I, Benjamin F. Hickman, clerk of the United States circuit court for Missouri district, do certify that the foregoing forty-two pages,

including this one, contain a full and complete transcript of the record and proceedings of said court, in a certain suit therein determined between Timothy S. Goodman, plaintiff, and John Simonds, defendant, as fully as the same remain of record and on file in my office.

In testimony whereof, I hereunto subscribe my name, and affix the seal of said court, at office, in the city of St. Louis, the twentieth day of February, 1856. [SEAL.]

BEN. F. HICKMAN,
Clerk U. S. C't C't Mo. Dis.

THE UNITED STATES OF AMERICA:

To John Simonds, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for Missouri district, wherein Timothy S. Goodman is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Robert W. Wells, judge of the district court of the United States for Missouri district, and one of the judges of the circuit court of the United States, eighth circuit and Missouri district, this 14th day of February, in the year of our Lord one thousand eight hundred and fifty six.

R. W. WELLS.

I hereby certify that I served the above citation on John Simonds on the 20th day of February, 1856, at the city of St. Louis, Mo., by permitting him to read the same, and that he acknowledged the service thereof.

THOMAS S. BRYANT,
U. S. Marshal Missouri District.

SUPREME COURT OF THE UNITED STATES.

TIMOTHY S. GOODMAN, plaintiff in error,
vs.
JOHN SIMONDS, defendant in error.

Assignment of errors.

And now comes the said plaintiff in error, and says there is manifest error in the record and proceedings of the said the circuit court of the United States for the district of Missouri, and the judgment

thereof, to his wrong and prejudice, and for causes of error assigns here the following, to wit:

1. That the said circuit court erred in giving to the jury the following instructions, as asked for by the said defendant and amended by the court, to wit:

If the jury find, from the evidence in the cause, that Wallace Sigerson never had any interest in the bill sued on nor in the proceeds thereof, nor any authority to use the same for his own benefit, and did dispose of the same for his own benefit to T. S. Goodman & Co., and the plaintiff was at the time one of said firm; and when the bill was so transferred to said firm, such facts and circumstances were known to the said Goodman as caused him to suspect, or that would have caused one of ordinary prudence to suspect, that said Wallace had no interest in the bill, and no authority to use the same for his own benefit, and by ordinary diligence he could have ascertained that said Wallace Sigerson had no interest in said bill, and no authority to use the same for his own benefit, then they will find for the defendant.

2. That the said circuit court erred in overruling the motion of plaintiff to set aside the verdict and grant a new trial.

3. That the said court committed other manifest errors, to the prejudice of the said plaintiff, as appears by the said transcript of the record of the said proceedings and judgment.

Wherefore the said plaintiff prays that the said judgment may be reversed, set aside, and held for naught, and that he be restored to all things he has lost by reason thereof.

WORTHINGTON & MATTHEWS,
Attorneys for Plaintiff in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the circuit court of the United States for the eighth circuit and district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Timothy S. Goodman, as plaintiff, and John Simonds, defendant, a manifest error hath happened, to the great damage of the said plaintiff, Goodman, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there

held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court, and the seal of the circuit court of the United States for Missouri district, and issued at office in St. Louis, this eleventh day of February, in the year of our Lord one thousand eight hundred and fifty-six.

[SEAL.]

BEN. F. HICKMAN,
Clerk C't C't U. S. Mo. Dis.

Allowed by me.

R. W. WELLS,
District Judge U. S. for District of Mo.

In obedience to the within writ, I herewith send a copy of the record and proceedings had in the circuit court of the United States for Missouri district, in the case of Timothy S. Goodman against John Simonds.

Given under my hand this 20th day of February, 1856.

BEN. F. HICKMAN, *Clerk.*